

Belvedere:
Jerry Butler

March 24, 2005

Corte Madera:
Melissa Gill

TO: Transportation Authority of Marin Commissioners

Fairfax:
Lew Tremaine

RE: Consider Supporting State Transportation Legislation, GoCalifornia Package, SB 1020 and AB 1623 – Agenda Item 11

Larkspur:
Joan Lundstrom

Dear Commissioners:

Mill Valley:
Dick Swanson

At the February 24, 2005 meeting of TAM, there was discussion about recently introduce legislation by the Schwarznegger administration called GoCalifornia and SB 1020 introduced by Senator Migden regarding TDA.

Novato:
Pat Eklund

Staff was asked to investigate MTC's position on these efforts and agendize them for discussion. Attached are staff reports from MTC's March 4, 2005 Legislative Committee meeting. At the meeting, the Committee adopted all the recommendations regarding GoCalifornia, but they have not ratified by the full Commission.

Ross:
Tom Byrnes

San Anselmo:
Peter Breen

The current status of Proposition 42 is:

San Rafael:
Al Boro

Under current law, the suspended Proposition 42 amounts for FY03-04 and FY04-05 (\$868 billion and \$1.2 billion respectively to all local agencies) are to be repaid - plus interest - by FY07-08 and FY08-09. In his proposed FY05-06 budget, the Governor has proposed to spread the repayment of these loans over 15 years - WITHOUT interest. Further, should the FY05-06 Prop 42 allocation be suspended (as he proposes), he proposes a 15 year repayment with no interest for that as well.

Sausalito:
Amy Belser

Tiburon:
Alice Fredericks

County of Marin:
Susan Adams
Hal Brown
Steve Kinsey
Charles McGlashan
Cynthia Murray

For a good (and much more thorough) discussion of this issue, see the Legislative Analysts Office's piece on Transportation funding in the LAO Analysis of the 2005-06 Budget bill at http://www.lao.ca.gov/analysis_2005/2005_pandi/pi_part_5_4_trans_funding_anl05.htm

In discussions with MTC staff, they intend to recommend support for SB 1020 at their April 8, 2005 Legislative Committee meeting. SB 1020 would allow a county to increase the current ½-cent sales tax (TDA) for public transportation by ¼-cent.

In discussions with Alameda Congestion Management Agency staff, there may be an opportunity for Marin County to be added to AB 1623, which would allow the county to collect a motor vehicle fee for management of traffic congestion

and mitigation of environmental impacts of motor vehicles. MTC staff indicated they also intend to consider AB 1623 at their April 8, 2005 Legislative Committee meeting.

Recommendation

Staff recommends the Commission discuss the pending legislation and provide direction to staff.

Respectfully Submitted,

Craig Tackabery
Executive Director

Attachment:

1. MTC staff report regarding GoCalifornia dated March 4, 2005
2. MTC staff report regarding GoCalifornia Initiative: Proposition 42, dated March 4, 2005
3. Senate Bill 1020
4. Assembly Bill 1623



**METROPOLITAN
TRANSPORTATION
COMMISSION**

Agenda Item 4d

Joseph P. Bort MetroCenter
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Oakland, CA 94607-4700
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Memorandum

TO: Legislation Committee

DATE: March 4, 2005

FR: Deputy Director, Policy

RE: GoCalifornia

Description

Business, Transportation and Housing Secretary Sunne Wright McPeak recently unveiled a three-bill package as the Schwarzenegger administration's plan to reform and revitalize California's transportation system. The "GoCalifornia" package includes a so-called "innovative finance" proposal, AB 850, and seeks to streamline project delivery with SB 705 and AB 1266. These ideas were included in the governor's California Performance Review (CPR) last year. In addition to these three bills, we included for your consideration an additional bill that is relevant to this discussion, AB 509 (Richman).

In addition to the Administration's three-bill package, "GoCalifornia" includes the administration's previously introduced measure to secure Proposition 42 funds in the future. We have included our analysis of that effort in a separate memorandum also distributed today.

Recommendations: AB 850 (Canciamilla) — Support and seek amendments
AB 509 (Richman) — Support
AB 1266 (Niello) — Support
SB 705 (Runner) — No position at this time

Discussion

AB 850 (Canciamilla) authorizes Caltrans to enter into development franchise agreements with public and/or private entities or consortia, not defined, for the construction and lease of (1) HOT lanes, (2) dedicated truck lanes, (3) mixed-flow toll lanes and "free" lanes, and (4) toll lanes "for all vehicles other than high-occupancy vehicles." The measure includes language to limit construction of new facilities that would compete with the toll roads and provide private investors with a reasonable rate of return.

A bill of particular interest among other bills recently introduced to address tolling or toll facilities is AB 509 (Richmond), a one sentence bill that authorizes regional transportation agencies to enter into agreements to finance regional user-fee based transportation projects, such as high-occupancy/toll (HOT) lanes.

In general terms, both AB 850, and AB 509 are consistent with MTC's recently adopted *Transportation 2030* initiative for a regional HOT lane network. AB 509 is limited in scope to facilitate regions, such as the Bay Area, to explore the feasibility of a HOT lane network. It is unclear, however, how AB 850 would affect the Bay Area's ability to move forward with a strategy in that sole authority is vested with Caltrans and as-yet undefined other public players and private investors.

In addition, AB 850 is much larger in scope than AB 509 to envision a broad authority to build and operate toll roads and enter into partnerships with private and public entities across California. It is worth noting that this concept is not new. Fifteen years ago, part of the package that resulted in the 1990 fuel tax increase in California — Proposition 111 — authorized Caltrans to enter into agreements with private entities for the construction by, and lease to, private entities of four transportation demonstration projects, including at least one in northern California and one in southern California. In addition to private toll road franchises created by AB 680, three publicly owned toll roads have also been built in Southern California.

The project in the Bay Area known as the mid-state toll road proposal was considered but Caltrans terminated the franchise in 2001 due to opposition in the Bay Area. In Southern California, one toll road was eventually built, Route 91 Express lanes in Orange County; a second is under construction, Route 125 in San Diego; and a third, Route 57, Orange County, is still under study. However, the project histories have been decidedly mixed. SR 91 is no longer a public-private partnership because the Orange County Transportation Authority and Orange County taxpayers bought out the private partner. In addition, the public toll road projects in Southern California have had a checkered past with respect to not meeting their financial projections.

Whether or not private or public toll roads can be successful in the future is a larger issue than our immediate interest in seeking an avenue to implement the direction of HOT lanes contained in *Transportation 2030*. Consequently, we recommend a "support" position on AB 509 and we recommend a "support and seek amendments" position on AB 850 to request language that would provide a clear means for MTC to participate in the process of developing toll facilities in the Bay Area.

AB 1266 (Niello) Design-Sequencing - Existing law authorizes Caltrans, until Jan. 1, 2010, to conduct a pilot project to award design-sequencing contracts for not more than 12 transportation projects. AB 1266 would instead authorize Caltrans to award contracts for projects using the design-sequencing contract method. Design sequencing authorization was added in 1999 and was last amended in 2004 by Senator Torlakson to extend the date to 2010 and double the number of projects to twelve.

At its core, design sequencing helps Caltrans shortcut its own processes. What separates design-sequencing from Caltrans traditional contracting methods is that design-sequencing enables construction activities to begin prior to the full completion of the design phase, allowing Caltrans to jump-start construction.

As of June 2003, Caltrans reported that 11 of the 12 projects had been chosen and that eight of the projects were in the construction phase. Three of the eight projects were opened to the public. The selected projects are all highway-related and include interchanges, freeway widenings, etc. Preliminary assessment of the projects indicates project completion timesavings of one to 20 months.

SB 705 (Runner) gives Caltrans broad authority to use the "design-build" process, whereby a contractor is selected to both design and construct a project under a single agreement. Traditionally, Caltrans uses the lengthy design-bid-build process, whereby Caltrans engineers design the project and Caltrans subsequently awards the construction to a private firm. If the construction effort founders on a design issue, Caltrans manages the problem (such as a change order) and the contractor moves on. In the "design-build" process this problem remains with the contractor for resolution, as they are both designer of record and builder.

Unlike design sequencing, design-build comes with significant known opposition from the Professional Engineers of California Government (PECG), the union representing 13,000 state-employed engineers, architects and land surveyors mostly working at Caltrans. Last year, PECG strongly opposed the CPR recommendation for design-build and design-build-operate procurement for state infrastructure, including transportation projects. PECG believes that the design-build procurement method eliminates competitive bidding and institutes a highly subjective procedure that has historically led to favoritism, waste and delay.

The Legislative Analyst's Office recently completed a report on design build and concludes:

Design-build can provide state and local agencies with a useful alternative to the more commonly used design-bid-build process to deliver construction projects. However, to the extent design-build contracts are awarded based solely on subjective criteria, there is an opportunity for compromising the public procurement process. Thus, it is important that statutory changes that make the design-build process more widely available to state and local agencies also preserve the public's confidence in the procurement process. Using construction management with competitive bidding of subcontracts or a two-envelope system can achieve that.

Because the full ramifications of design-build for state-sponsored projects is not fully known, we recommend not taking a position on SB 705 at this time. It is likely that this bill will undergo changes, and we need more time to understand the full effect of a broad authority granted to Caltrans for design-build.

Therese W. McMillan



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Agenda Item 4d

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Memorandum

TO: Legislation Committee

DATE: March 4, 2004

FR: Deputy Director, Policy

RE: GoCalifornia Initiative: Proposition 42

Description

GoCalifornia touches on some important themes that are a priority for the commission, such as project delivery and new financing options. But one crucial step Sacramento must take to get California moving this year is to address a fundamental problem of decades in the making. Simply put, state investment in the transportation system has not kept pace with usage. Since the passage of Proposition 42 in 2002, funds identified for transportation have been used to solve deficits in the state's General Fund. While protecting the \$1.3 billion in annual transportation revenues generated by Proposition 42 is no panacea, it is widely believed to be the first step needed in building a convincing case for additional transportation revenue.

Recommendations: ACA 4 (Plescia) — Support and seek amendments
ACA 11 (Oropeza) — Support and seek amendments
ACA 4X (Keene) — Oppose unless amended
ACA 9 (Bogh) — No position at this time
ACA 10 (Nunez) — No position at this time

Discussion

MTC's 2005 Legislative Program states that the ideal constitutional amendment dealing with Proposition 42 would contain the following components:

1. Delete the provision that allows the funds to be suspended, and instead permit funds to be loaned to the General Fund on the condition they are repaid within three years, with interest.
2. Provide that no more than two loans should be permitted in any ten-year period.
3. Prohibit any additional loans until the first loan is repaid.
4. Ensure that the statutory commitment to the 159 projects in the Traffic Congestion Relief Program (TCRP) is fully honored.

Items 2 and 3 will sound familiar: they are based on provisions contained in last year's successful local government initiative (Proposition 1A). Item 4 is particularly important for the Bay Area. As you know, Proposition 42 provided funding for the 159 TCRP projects through FY 2007-08, including 37 in the Bay Area. Because the law included a cut-off date for this funding, a shortfall is created in any year in which the funds are suspended. To date, the

Bay Area has received less than one-third of the statutory commitment of \$1.6 billion towards specific Bay Area projects, including \$725 million for BART-to-Warm Springs. Absent legislative action to restore this "lost" funding, many critical projects will be left with gaping holes in their budgets.

As shown below, five constitutional amendments have been introduced to date specifically on the subject of Proposition 42. ACA 9 (Bogh) would change the vote threshold required for a suspension from two-thirds to four-fifths, while ACA 10 (Nunez) is just a "spot" bill. None of the other bills contain *all* of the above provisions, but ACA 11 (Oropeza) comes the closest, containing all but the protection of the TCRP projects.

Constitutional Amendments Introduced Related to Proposition 42

	Removes suspension	Loan repaid with interest	Cap on number of loans and 3-year limit	Protects TCRP projects	Recommended position
ACA 4 (Plescia)	√				Support and seek amendments
ACA 4X (Keene)	√				Oppose unless amended
ACA 9 (Bogh)					No position at this time
ACA 10 (Nunez)					No position at this time
ACA 11 (Oropeza)	√	√	√		Support and seek amendments

In addition to removing the suspension provision, ACA 4X (Plescia) contains the governor's proposal for across-the-board cuts to General Fund programs in the event that revenues are not keeping pace with anticipated expenditures and the Legislature fails to act within 45 days. This would include Proposition 42-funded programs, as it would still fall under the "General Fund" umbrella. Given that this would continue to expose transportation to unpredictable cuts, we recommend an "oppose unless amended" position on ACA 4X. With regard to ACA 9, we believe that although the path toward more stringent supermajorities seems like a poor substitute for direct steps to secure this funding source for transportation, this path has been taken in prior years with respect to protecting transportation funding. Given ACA 9 is a less favorable alternative; we recommend taking no position at this time.

For ACA 11 and ACA 4, we recommend a "support and seek amendments" position, where the amendments would be to add the missing pieces from our four components listed above. With regard to ACA 10 (which is currently a spot bill) we recommend that we wait until the bill is amended before taking a position.

Therese McMillan

Introduced by Senator MigdenFebruary 22, 2005

An act to amend Section 29530 of the Government Code, and to add Section 7203.25 to the Revenue and Taxation Code, relating to local government finance.

LEGISLATIVE COUNSEL'S DIGEST

SB 1020, as introduced, Migden. County sales and use taxes: rate increase

The Bradley-Burns Uniform Local Sales and Use Tax Law (Bradley-Burns Law) authorizes a county and a city and county to impose a local sales and use tax, and similarly authorizes a city, located within a county imposing such a tax rate, to impose a local sales tax rate that is credited against the county rate. Existing law requires a city, county, or city and county imposing a local sales and use tax pursuant to the Bradley-Burns Law to contract with the State Board of Equalization to administer the local sales and use tax. Existing law authorizes a county or city and county to contract with the State Board of Equalization to establish a local transportation fund in the county treasury for the deposit of $\frac{1}{4}$ of 1% of the revenues collected for the county or city and county under the Bradley-Burns Law for specified transportation purposes.

This bill would authorize a county or city and county to impose an additional $\frac{1}{4}$ of 1% sales and use tax rate under the Bradley-Burns Law. This bill would require a county or city and county that imposes this additional rate to deposit all revenues derived therefrom, less specified administrative costs, into a local transportation fund, as specified. This bill would also require a county or a city and county that imposes this additional tax to comply with the applicable

voter-approval requirements of a specified provision of the California Constitution.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 29530 of the Government Code is
2 amended to read:

3 29530. (a) If the board of supervisors so agrees by contract
4 with the State Board of Equalization, the board of supervisors
5 shall establish a local transportation fund in the county treasury
6 and shall deposit in the fund all revenues transmitted to the
7 county by the State Board of Equalization under Section 7204 of
8 the Revenue and Taxation Code, which are derived from that
9 portion of the taxes imposed by the county at a rate in excess of 1
10 percent, and on and after July 1, 2004, until the rate
11 modifications in subdivision (a) of Section 7203.1 of the
12 Revenue and Taxation Code cease to apply, at a rate in excess of
13 three-quarters of 1 percent, pursuant to Part 1.5 (commencing
14 with Section 7200) of Division 2 of that code, less an allocation
15 of the cost of the services of the State Board of Equalization in
16 administering the sales and use tax ordinance related to the rate
17 in excess of 1 percent, and on and after July 1, 2004, until the
18 rate modifications in subdivision (a) of Section 7203.1 of the
19 Revenue and Taxation Code cease to apply, to the rate in excess
20 of three-quarters of 1 percent, and of the Director of
21 Transportation and the Controller in administering the
22 responsibilities assigned to him or her in Chapter 4 (commencing
23 with Section 99200) of Part 11 of Division 10 of the Public
24 Utilities Code.

25 (b) (1) *The board of supervisors of a county or city and*
26 *county that imposes a tax pursuant to Section 7203.25 of the*
27 *Revenue and Taxation Code shall contract with the State Board*
28 *of Equalization to establish a local transportation fund in the*
29 *county or city and county treasury, and shall deposit in the fund*
30 *all revenues transmitted to the county or city and county by the*
31 *State Board of Equalization under Section 7204 of the Revenue*
32 *and Taxation Code that are derived from that portion of the taxes*
33 *imposed by the county or city and county under Section 7203.25*

1 of the Revenue and Taxation Code, less an allocation of the cost
2 of the services of the State Board of Equalization in
3 administering the sales and use tax ordinance related to that rate
4 and the Director of Transportation and the Controller in
5 administering the responsibilities assigned to him or her in
6 Chapter 4 (commencing with Section 99200) of Part 11 of
7 Division 10 of the Public Utilities Code.

8 (2) The board of supervisors of a county or city and county
9 that has established a local transportation fund under
10 subdivision (a) is deemed to have established the local
11 transportation fund described in paragraph (1). The board of
12 supervisors shall deposit into that fund all revenues described in
13 paragraph (1).

14 (c) Any interest or other income earned by investment or
15 otherwise of the local transportation fund shall accrue to and be
16 a part of the fund.

17 SEC. 2. Section 7203.25 is added to the Revenue and
18 Taxation Code, to read:

19 7203.25. (a) Notwithstanding any other provision of law, on
20 and after January 1, 2006, a county and a city and county may,
21 for the purposes specified in subdivision (b) of Section 29530 of
22 the Government Code, impose a sales and use tax rate of
23 one-quarter of 1 percent, in addition to the rates authorized by
24 Sections 7202 and 7203, for the privilege of selling tangible
25 personal property at retail in the county or city and county, and
26 upon the storage, use or other consumption in the county or city
27 and county of tangible personal property purchased from any
28 retailer for storage, use or other consumption in the county or
29 city and county.

30 (b) A county and city and county that imposes a tax pursuant
31 to subdivision (a) shall comply with both of the following:

32 (1) All other applicable provisions of this part.

33 (2) The applicable voter-approval requirements of Section 2 of
34 Article XIII C of the California Constitution when the county or
35 city and county imposes, extends, or increases the tax authorized
36 by this section.

ASSEMBLY BILL

No. 1623

Introduced by Assembly Member Klehs

February 22, 2005

An act to add Chapter 2.66 (commencing with Section 65089.20) to Division 1 of Title 7 of the Government Code, and to add Section 9250.4 to the Vehicle Code, relating to transportation.

LEGISLATIVE COUNSEL'S DIGEST

AB 1623, as introduced, Klehs. Alameda County Congestion Management Agency: congestion management and environmental mitigation fee.

Existing law provides for the imposition by air districts and other local agencies of fees on the registration of motor vehicles in certain areas of the state that are in addition to the basic vehicle registration fee collected by the Department of Motor Vehicles.

This bill would authorize the Alameda County Congestion Management Agency to impose an annual fee of up to \$4 on motor vehicles registered within Alameda County for a program for the management of traffic congestion and the mitigation of environmental impacts of motor vehicles within that county. The bill would require the agency to have an independent audit performed on the program and to provide its findings to the Legislature. The bill would require a program with performance measures and a budget before the fee may be imposed. The bill would require the Department of Motor Vehicles, if requested, to collect the fee and distribute the proceeds, after deduction of specified administrative costs, to the agency. The bill would require that the fees collected may only be used to pay for programs bearing a relationship or benefit to the motor vehicles paying the fee, and would require the agency to make a specified

finding of fact by a 2/3 vote. The fee would terminate on January 1, 2012.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 2.66 (commencing with Section
2 65089.20) is added to Division 1 of Title 7 of the Government
3 Code, to read:

4
5 CHAPTER 2.66. MANAGEMENT OF TRAFFIC CONGESTION AND
6 ENVIRONMENTAL MITIGATION OF TRANSPORTATION IN ALAMEDA
7 COUNTY
8

9 65089.20. (a) The Alameda County Congestion Management
10 Agency, which has been formed by the resolutions of the Board
11 of Supervisors of Alameda County and a majority of the city
12 councils within the county that represent a majority of the
13 population in the incorporated area of Alameda County, may
14 impose a fee of up to four dollars (\$4) on motor vehicles
15 registered within Alameda County. The agency may impose the
16 fee only if the board of the agency adopts a resolution providing
17 for both the fee and a corresponding program for the
18 management of traffic congestion and the mitigation of the
19 impacts of motor vehicles on the environment within Alameda
20 County as set forth in Sections 65089.21 to 65089.24, inclusive.
21 Adoption by the board requires a vote of approval by board
22 members representing two-thirds of the population of Alameda
23 County.

24 (b) A fee imposed pursuant to this section shall not become
25 operative until July 1, 2006, pursuant to the resolution adopted
26 by the board in subdivision (a).

27 (c) The fee shall terminate on January 1, 2012, unless
28 preauthorized by the Legislature.

29 65089.21. (a) The fees distributed to the agency pursuant to
30 Section 9250.4 of the Vehicle Code shall be used for purposes of
31 congestion management as specified in its adopted congestion
32 management program pursuant to Section 65089, and for the

1 purposes of the mitigation of the impacts of motor vehicles on
2 the environment.

3 (b) (1) The fees collected may be used to pay for programs
4 with a relationship or benefit to the motor vehicles that are
5 paying the fee.

6 (2) Prior to imposing the fee, the board of the association shall
7 make a finding of fact by a 2/3 vote that those programs bear a
8 relationship or benefit to the motor vehicles that will pay the fee.

9 (c) The purpose of the congestion management program is to
10 address motor vehicle congestion.

11 (d) Only the environmental mitigation programs that directly
12 address the negative impact motor vehicle usage has on the
13 environment, such as air pollution, and storm water runoff caused
14 by motor vehicles and the infrastructure supporting motor vehicle
15 travel, are eligible for funding.

16 (e) Not more than 5 percent of the fees distributed to the
17 agency shall be used by the association for its administrative
18 costs associated with the program.

19 65089.22. Prior to the imposition of the fee by the agency, a
20 specific program with performance measures and a budget shall
21 first be developed and adopted by the agency at a noticed public
22 hearing.

23 65089.23. The agency shall have an independent audit
24 performed on the specific program adopted pursuant to Section
25 65089.22 with the review and report provided to the board at a
26 noticed public hearing.

27 65089.24. The agency shall provide a report to the Legislature
28 on the specific program adopted pursuant to Section 65089.22 by
29 July 1, 2008.

30 SEC. 2. Section 9250.4 is added to the Vehicle Code, to read:

31 9250.4. (a) The department shall, if requested by the
32 Alameda County Congestion Management Agency, collect the
33 fee imposed pursuant to Section 65089.20 of the Government
34 Code upon the registration or renewal of registration of any
35 motor vehicle registered in the county, except those vehicles that
36 are expressly exempted under this code from the payment of
37 registration fees.

38 (b) The agency shall pay for the initial setup and programming
39 costs identified by the Department of Motor Vehicles through a
40 direct contract with the department. Any direct contract payment

- 1 by the agency shall be repaid, with no restriction on the funds, to
2 the agency as part of the initial revenues distributed. Regular
3 Department of Motor Vehicles collection costs shall be in
4 accordance with subdivision (c). These costs shall not be counted
5 against the 5-percent administration cost limit specified in
6 subdivision (e) of Section 65089.21.
- 7 (c) After deducting all costs incurred pursuant to this section,
8 the department shall distribute the revenues to the agency.
- 9 (d) As used in this section, "agency" means the Alameda
10 County Congestion Management Agency.